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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**ASSOCIATION OF HOLOCAUST VICTIMS
FOR RESTITUTION OF ARTWORK AND
MASTERWORKS, et al.**

Plaintiffs,

v.

**FEDERATION OF RUSSIA, et al. and
REPUBLIC OF GERMANY,**

Defendants.

CV-04-8456 Swain, J.
Electronically Filed

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**FEDERAL REPUBLIC OF GERMANY'S MOTION TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION, INSUFFICIENCY OF SERVICE OF PROCESS
AND LACK OF PERSONAL JURISDICTION**

The Federal Republic of Germany¹, by counsel, Rubin, Winston, Diercks, Harris and Cooke, LLP for the reasons stated in its accompanying memorandum of law, moves this Court pursuant to:

1. Fed. R. Civ. P. 12(b)(1) to dismiss the complaints against Germany for lack of subject matter jurisdiction because Germany is immune from the jurisdiction of the courts of the United States pursuant to 28 U.S.C. 1602, *et. seq.*, the Foreign Sovereign Immunities Act ("FSIA").
2. Fed. R. Civ. P. 12(b)(5) to dismiss the complaints against Germany for lack of proper service of process pursuant to 28 U.S.C. 1608.
3. Fed. R. Civ. P. 12(b)(2) to dismiss the complaints against Germany for lack of personal jurisdiction.

Germany, by counsel, therefore also moves this Court to vacate the Show Cause order entered by the Court on December 6, 2004 if it concludes that it lacks jurisdiction.

Certification in Accordance With The
Individual Practices of Judge Laura Taylor Swain

Prior to making this motion counsel for the Federal Republic of Germany spoke by telephone on December 8, 2004 to Edward D. Fagan, Esq, counsel for Plaintiffs, to attempt to secure Plaintiffs' consent to the relief requested herein. Mr. Fagan informed counsel that Plaintiffs opposed the requested relief and do not consent.

¹ Plaintiffs have improperly identified the Federal Republic of Germany (hereinafter "Germany") as the Republic of Germany in their complaints and correspondence with the Court.

Dated: December 9, 2004

Respectfully submitted,

/s/Jeffrey Harris
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CERTIFICATE OF SERVICE

I certify that the above Defendant's Motion To Dismiss, supporting Memorandum of Law and Proposed Order were served by First Class United States Mail, postage, postage prepaid, on December 9, 2004 to the following attorneys for Plaintiff:

Edward D. Fagan, Esq.
140 Broadway
46th Floor
New York, NY 10005

Morse Geller, Esq.
277 Sycamore Street
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/s/ Adrienne M. Bauer